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No. 617

In the Supreme Court of the United States

OCTOBER TERM, 1952

DISTRICT OF COLUMBIA, PETITIONER

JOHN B. THOMPSON COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED
STATES



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v.

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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is being submitted to the Court, out of an abundance of caution, in order to dispel any possible doubts that may have arisen during the oral argument as to the general availability to the bar and the public in the District of Columbia of the Acts of 1872 and 1873 of the Legislative Assembly, the validity and continued effectiveness of which are challenged by respondent in this case.

To be sure, the engrossed originals of these Acts are physically in the possession of the Commissioners of the District of Columbia in a bound volume kept in the official headquarters of the District Government in the District Building (R. 90, footnote). That fact is no more significant here than is the fact, in a federal criminal case, that the original engrossed copies of Acts of Congress are kept by the General Services Administration (64

Stat. 1272) and that the original manuscript of the Constitution is in the National Archives.

The Acts of the Legislative Assembly, enacted during the three years of its existence, were printed and published for general use in 1872 and 1873 in the form of session laws, under the authority of Edwin L. Stanton, Secretary of the District of Columbia, whose official duty it was to "record and preserve all laws and proceedings of the legislative assembly" (Sec. 4, Organic Act of 1871, 16 Stat. 419, 420). The laws enacted in 1871 and 1872 at the regular session and two special sessions of the First Legislative Assembly, and at the regular session of the Second Legislative Assembly, were bound together and published on November 1, 1872. The acts passed at the regular session of the Third Legislative Assembly were published on August 1, 1873. In the preface to each of these two volumes Mr. Stanton, as Secretary of the District, states that the Acts of the Legislative Assembly contained therein had been "carefully collated and compared with the original rolls in the archives of the District." The title of the first volume is "Laws of the District of Columbia, 1871-1872"; the second volume, "Laws of the District of Columbia, 1873." These volumes contain the full text of the Acts of June 20, 1872 (2d Legis. Assembly, sess. I, ch. LI) and of June 26, 1873 (3d Legis. Assembly, sess. I, ch. XLVI), which are involved in this case.

In order to ascertain whether these volumes are, and have been, generally available to the bar and the public, the Department of Justice, subsequent

to the oral argument, inquired of the following libraries whether they have these volumes:

1. The Library of the Supreme Court of the United States.
2. The Library of Congress.
3. The Public Library of the District of Columbia.
4. The Bar Association Library in the United States Court House.
5. The Library of the Department of Justice.

We have been advised that these volumes containing the "Laws of the District of Columbia" for 1871-1873, including the Acts here in question, are to be found in all of these libraries. In most of them, they are on the open shelves in the section containing the statutes and decisions for the District of Columbia. Presumably, although we have had no time to check it, these volumes are also available in the private libraries of some of the larger law firms in the District.

Moreover, as Mr. Collady mentioned at the argument, the Acts of 1872 and 1873 here involved are to be found in "The Compiled Statutes in force in the District of Columbia", compiled by W. S. Abert and B. G. Lovejoy, appointed by the Supreme Court of the District of Columbia pursuant to the Act of Congress of March 2, 1889 (25 Stat. 872), which authorized and directed that court "to appoint two persons learned in the law as Commissioners to compile, arrange, and classify, with a proper index, all statutes and parts of statutes in

force in the said District * * *." This compilation was approved by the Supreme Court of the District of Columbia, which on June 2, 1894, ordered that 5,000 copies be printed. It was published that year by the Government Printing Office, and the provisions of the Acts of 1872 and 1873 here involved appear at pages 183-185. This compilation was widely distributed among the bar and public. (We are informed, for example, that this volume is in the library of the firm of Covington & Burling, Union Trust Building, Washington, D.C.). Copies of Abert and Lovejoy's "Compiled Statutes" are to be found on the open shelves of all the libraries in the District referred to above.

Finally, it should be noted that the Act of Congress of March 2, 1911 (36 Stat. 966) directed the District Commissioners to prepare "an index of the laws of Congress relating to the District of Columbia, *and of the laws of the former municipal governments in the District which are still in force* * * *." (Emphasis added.) Pursuant to this statute, the Commissioners appointed William F. Meyers to make such an index. His "Comprehensive General Index of the Laws of the District of Columbia in force January 1, 1912" makes specific reference to the provisions of the 1872-1873 Acts contained in Abert & Lovejoy's "Compiled Laws." (Pp. 97, 151.) This volume, too, is generally available on the open shelves of all the public libraries listed above.

Since there is not now and never has been a complete codification of *all* the statutes in force in the

District, it is of no significance that these Acts do not appear in the District of Columbia Code. That Code is only "prima facie" evidence of the laws in force in the District (Act of May 29, 1928, 45 Stat. 1007, as amended March 2, 1929, 45 Stat. 1541.) Moreover, Title 49, chapter 3 of the Code, dealing with "Laws Remaining in Force", treats acts of the Legislative Assembly, as well as ordinances of the city of Washington, as continuing in force. (Sec. 49-302.) And the provisions of Sections 1636-1640 of the 1901 Code which, as is shown in our brief (pp. 55-82), did not repeal these Acts but continued them in force, are set out verbatim in Section 49-304 of the D. C. Code.

It is respectfully submitted, therefore, that there is no basis whatsoever for any inference that these laws were "lost", or that it was necessary to pry into musty archives or other obscure places not accessible to the bar and the public generally, in order to ascertain and verify their existence and continuing vitality.

Respectfully submitted,

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MAY 2, 1953. •